

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEANINE SANTIAGO,

No C-09-0160 VRW (PR)

Plaintiff,

v

UNITED STATES OF AMERICA

ORDER OF SERVICE

Defendant(s).

I

Plaintiff, a former prisoner at the Federal Correctional Institution in Dublin, California (FCI - Dublin), has filed a pro se complaint for damages under the Federal Tort Claims Act ("FTCA"), 28 USC §§ 1346(b), 2671-2680, alleging that officials at FCI - Dublin were grossly negligent with respect to the safety of the cell in which she was housed and with respect to her medical care once she sustained an injury.

II

Federal courts must engage in a preliminary screening of

1 cases in which prisoners seek redress from a governmental entity or
2 officer or employee of a governmental entity. 28 USC § 1915A(a).
3 The court must identify cognizable claims or dismiss the complaint,
4 or any portion of the complaint, if the complaint "is frivolous,
5 malicious, or fails to state a claim upon which relief may be
6 granted," or "seeks monetary relief from a defendant who is immune
7 from such relief." Id § 1915A(b). Pleadings filed by pro se
8 litigants, however, must be liberally construed. Balistreri v
9 Pacifica Police Dep't, 901 F2d 696, 699 (9th Cir 1990).

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11 A

12 Absent a waiver, sovereign immunity shields the federal
13 government and its agencies from suit. Loeffler v Frank, 486 US
14 549, 554 (1988). In passing the FTCA, Congress waived the sovereign
15 immunity of the United States for torts committed by federal
16 employees acting within the scope of their employment. FDIC v
17 Meyer, 510 US 471, 475-76 (1994).

18 The FTCA encompasses liability for injury or loss of
19 property or personal injury or death caused by "the negligent or
20 wrongful act or omission of any employee of the federal government"
21 while acting within the scope of the employee's office or
22 employment. 28 USC §§ 1346(b), 2672. The statute defines "employee
23 of the government" to include "officers and employees of any federal
24 agency." Id § 2671.

25 The court must determine whether the United States is
26 subject to tort liability by applying the law of the state where the
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1 act or omission occurred. See McMillan v United States, 112 F3d
2 1040, 1043 (9th Cir 1997); Ciao v INS, 16 F3d 1039, 1041 (9th Cir
3 1994). The United States is liable only "if a private person[]
4 would be liable to the claimant in accordance with the law of the
5 place where the act or omission occurred." 28 USC § 1346(b). Put
6 simply, the United States waives sovereign immunity only under
7 circumstances where local law would make a private person liable in
8 tort. United States v Olson, 546 US 43 (2005); accord Ravel v
9 United States, 22 F3d 960, 961 (9th Cir 1994) (US must be treated as
10 private person even if different rule applies to state governmental
11 entities); Tekle v United States, 511 F3d 839, 854 (9th Cir 2007)
12 (liability of federal officers for false arrest or imprisonment is
13 governed by state law regarding liability of private individual for
14 effectuating a false "citizen's" arrest). The FTCA does not
15 encompass constitutional torts. See Meyer, 510 US at 476-78.
16 Instead the FTCA is limited to state torts since its source of
17 substantive liability is the law of the state where the act or
18 omission occurred. Id at 477 (citations omitted).

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20 B

21 On December 3, 2006, plaintiff fell while climbing down
22 from her bunk bed in her cell at FCI - Dublin and was "impaled by
23 [a] protruding screw." Plaintiff claims officials at FCI - Dublin
24 were grossly negligent in creating unsafe living conditions and in
25 providing her with medical care following her injury. Liberally
26 construed, plaintiff's allegations appear to state a claim under the
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1 FTCA.

3 III

4 For the foregoing reasons and for good cause shown:

5 1. The clerk shall issue summons and the United States
6 Marshal shall serve the United States, without prepayment of fees,
7 by delivering a copy of the summons and complaint to the United
8 States Attorney for the Northern District of California. See Fed R
9 Civ P 4(i)(1)(A)(i). The clerk shall send a copy of the summons and
10 complaint by registered or certified mail to the Attorney General of
11 the United States in Washington, DC. See id 4(i)(1)(B). The clerk
12 also shall send a copy of this order to plaintiff.

13 2. In order to expedite the resolution of this case, the
14 court orders as follows:

15 a. No later than 90 days from the date of this
16 order, defendant shall file a motion for summary judgment or other
17 dispositive motion. A motion for summary judgment shall be
18 supported by adequate factual documentation and shall conform in all
19 respects to Federal Rule of Civil Procedure 56, and shall include as
20 exhibits all records and incident reports stemming from the events
21 at issue. If defendant is of the opinion that this case cannot be
22 resolved by summary judgment or other dispositive motion, it shall
23 so inform the court prior to the date its motion is due. All papers
24 filed with the court shall be served promptly on plaintiff.

25 b. Plaintiff's opposition to the dispositive motion
26 shall be filed with the court and served upon defendant no later
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1 than 30 days after defendant serves plaintiff with the motion.

2 c. Plaintiff is advised that a motion for summary
3 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
4 if granted, end your case. Rule 56 tells you what you must do in
5 order to oppose a motion for summary judgment. Generally, summary
6 judgment must be granted when there is no genuine issue of material
7 fact - that is, if there is no real dispute about any fact that
8 would affect the result of your case, the party who asked for
9 summary judgment is entitled to judgment as a matter of law, which
10 will end your case. When a party you are suing makes a motion for
11 summary judgment that is properly supported by declarations (or
12 other sworn testimony), you cannot simply rely on what your
13 complaint says. Instead, you must set out specific facts in
14 declarations, depositions, answers to interrogatories, or
15 authenticated documents, as provided in Rule 56(e), that contradicts
16 the facts shown in the defendant's declarations and documents and
17 show that there is a genuine issue of material fact for trial. If
18 you do not submit your own evidence in opposition, summary judgment,
19 if appropriate, may be entered against you. If summary judgment is
20 granted, your case will be dismissed and there will be no trial.
21 Rand v Rowland, 154 F3d 952, 962-63 (9th Cir 1998) (en banc) (App
22 A).

23 Plaintiff also is advised that a motion to dismiss for
24 failure to exhaust administrative remedies under 42 USC section
25 1997e(a) will, if granted, end your case, albeit without prejudice.
26 You must "develop a record" and present it in your opposition in
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1 order to dispute any "factual record" presented by the defendants in
2 their motion to dismiss. Wyatt v Terhune, 315 F3d 1108, 1120 n14
3 (9th Cir 2003).

4 d. Defendant shall file a reply brief within 15
5 days of the date on which plaintiff serves it with the opposition.

6 e. The motion shall be deemed submitted as of the
7 date the reply brief is due. No hearing will be held on the motion
8 unless the court so orders at a later date.

9 3. Discovery may be taken in accordance with the Federal
10 Rules of Civil Procedure. No further court order is required before
11 the parties may conduct discovery.

12 4. All communications by plaintiff with the court must
13 be served on defendant, or defendant's counsel once counsel has been
14 designated, by mailing a true copy of the document to defendant or
15 defendant's counsel.

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1 5. It is plaintiff's responsibility to prosecute this
2 case. Plaintiff must keep the court and all parties informed of any
3 change of address and must comply with the court's orders in a
4 timely fashion. Failure to do so may result in the dismissal of
5 this action pursuant to Federal Rule of Civil Procedure 41(b).

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8 IT IS SO ORDERED.

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13 VAUGHN R WALKER
14 United States District Chief Judge
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